



CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance and Litigation



Biweekly Report - Period Ending March 15, 1997

American Combustion Industries, Inc.—GAO B-270570

We have just received the decision in this protest. Although most protest grounds were denied, the GAO sustained the protest on the basis that the Government failed, during discussions, to raise with the Protestor negative information received from past performance referrals. What is significant is that this is the first time that the GAO has clearly addressed the issue of the responsibility of the Government to discuss negative past performance when the Protestor, itself, had the discretion to choose the past contracts it would provide to the Government for evaluation (and arguably to determine beforehand what would be said). As a result of this decision, which is based upon the GAO's interpretation of FAR §15.610(c)(6), the Government can no longer rely on earlier GAO decisions in this area. The decision did not vacate the award, but recommended a new round of discussions to allow the Protestor to rebut these negative references, followed by a re-scoring by the technical evaluation committee, and new best and final offers (BAFOs). Ken Lechter had the case.

Debcon, Inc., v. Dept. of DOC—GSBCA No. 13923-COM

The Board granted the Government's Motion to Dismiss two claims that the Appellant had not previously presented to the CO for decision. Appellant's Complaint consisted of approximately ten different claims. Cecilia R. Jones has the case.

Fairbanks Command and Data Acquisition Station

Mark Langstein attended an oral proposal presentation by <Name deleted>... in this 5-year re-compete to operate NESDIS' Fairbanks, Alaska CDAS which receives weather and other satellite data.

System Development and Maintenance (SDM) Awards

The GAO bid protest period, but arguably not that for the COFC, has passed in the SDM procurement, PTO's largest ever – total contract value is approximately \$500 million. The PTO SDM contracts were awarded to Lockheed Martin and Computer Science Corporation. Although face-to-face debriefings of the losing offerors were not conducted, all offerors were provided with extensive written information describing the evaluation process and results. Performance on the contracts will begin in June of this year. Lisa J. Obayashi was advising

FCS Training

For the fourth time, Ken Lechter presented, with Diane Husareau of PGAS, bankcard training for senior FCS commercial officers. On this occasion, the class included officers from Europe and South America. This training is part of a pilot program to certify commercial officers overseas to receive bankcard authority up to \$25,000.

Black Diamond Enterprises, Ltd. v. DOC—GSBCA No. 13586-COM

Reviewed and signed the final draft of the Stipulation and Settlement which will close out this Appeal of a termination for default action. As soon as the Board issues an Order Dismissing the Appeal with Prejudice, this case can be closed. Lisa J. Obayashi had the matter.

Core Financial System

Mark Langstein met with the Contracting Officer, COTR and Project Management to discuss issues relating to software ownership and warranty, constructive acceptance, and past performance recommendations. Although the system is mostly functional and installation and testing are proceeding at NIST and Census, outstanding bugs still remain.

Good-bye Roxie

Roxie Jones leaves CLD to become the new acting Chief Counsel of ESA. Best wishes to Roxie from all of the F&L staff!

Actions Completed/Received during Period

	From 3/2/97	To 3/15/97
	Received	Completed
MBDA	0	1
NIST	1	0
NOAA	8	7
PTO	3	3
Total	12	11

Contract Law Division—Client Workload Period Ending 03/15/97

